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JANA DCS SDN BHD v. TAR PH FAMILY ENTERTAINMENT SDN BHD & OTHER CASES

HIGH COURT MALAYA, SHAH ALAM
FAIZAH JAMALUDIN J
[ORIGINATING SUMMONS NOS: BA-24-30-09-2019,
B BA-24-31-09-2019 & BA-24-32-09-2019]
30 JUNE 2021

Abstract – *(i) The High Court's power to arrest ships, as security for arbitral proceedings under its admiralty jurisdiction, does not cancel or strip its power to grant interim reliefs for arbitral proceedings under its civil jurisdiction; (ii) The power given to arbitral tribunals to grant interim measures does not replace the High Court's powers to grant interim measures before or during arbitral proceedings; and (iii) A High Court ruling, made in the course of a hearing, is not a decision that finally disposes of the rights of the parties.*

CIVIL PROCEDURE: *Jurisdiction – High Court – Applications for Mareva injunctions – Restraint of removal or dissipation of assets pending final determination of arbitral proceedings – Whether High Court seized with requisite jurisdiction to hear and grant applications – Whether High Court's power to grant interim reliefs for preservation of assets limited to arrest of ships, bail or security under admiralty jurisdiction – Whether High Court seized with jurisdiction to grant Mareva injunction before or during arbitral proceedings – Whether only arbitral tribunal empowered to grant such relief – Arbitration Act 2005, ss. 11(1)(c) & 19(2)(c)*

CIVIL PROCEDURE: *High Court – Ruling – Ruling made in course of hearing at High Court – Whether decision finally disposes of rights of parties – Whether Court of Appeal has jurisdiction to hear appeal against High Court ruling – Courts of Judicature Act 1964, ss. 3 & 67*

MARITIME LAW: *Jurisdiction – High Court – Applications for Mareva injunctions – Restraint of removal or dissipation of assets pending final determination of arbitral proceedings – Whether High Court seized with requisite jurisdiction to hear and grant applications*

The plaintiff and the defendants had entered into agreements and, when disputes ensued, the matter was referred to arbitration. The plaintiff then commenced these applications, by way of originating summonses ('OSs'), seeking *Mareva* injunctions against the defendants to restrain them from removing from Malaysia or, otherwise, from dissipating any of its assets in Malaysia up to the value of RM100 million, pending the final determination of the arbitral proceedings ('plaintiff's applications'). The issue that arose before the substantive hearing was whether the court was seized with the

requisite jurisdiction to hear and to grant the plaintiff's applications. The parties agreed that should the court rule that the High Court (i) was seized with the jurisdiction, the court will then proceed with the substantive hearing of the OSs on its merits; and (ii) did not have the jurisdiction, the OSs will be dismissed. The defendants argued that the High Court did not have the power to grant the *Mareva* injunctions on the grounds that, *inter alia*, (i) the High Court's power to grant interim reliefs for the preservation of assets, under s. 11(1)(c) of the Arbitration Act 2005 ('AA'), is limited to the arrest of ships, bail or security under its admiralty jurisdiction; and (ii) the High Court does not have the jurisdiction to grant a *Mareva* injunction before or during arbitral proceedings as the arbitral tribunal is empowered to grant such relief, under s. 19(2)(c) of the AA. The court ruled that the High Court was indeed seized with the requisite jurisdiction to hear the plaintiff's applications ('ruling on the issue of jurisdiction'). However, before the matter could proceed to its substantive hearing, the defendants filed an appeal to the Court of Appeal against the ruling on the issue of jurisdiction.

Held (court has jurisdiction to hear and decide on plaintiff's applications):

(1) From a plain reading of s. 11(1) of the AA, the extension of the High Court's power to arrest ships, as security for arbitral proceedings under its admiralty jurisdiction, does not cancel or strip its power to grant interim reliefs for arbitral proceedings under its civil jurisdiction. The High Court retains its power to grant interim reliefs under its civil jurisdiction as a means of preserving assets for the purpose of satisfying awards which may be made in arbitral proceedings. (paras 30 & 31)

(2) Without any express provisions, it would be wrong to impute into the AA that the power given to arbitral tribunals to grant interim measures in s. 19(2) of the AA replaces or is *in lieu* of the High Court's powers in s. 11(1) of the AA to grant interim measures before or during arbitral proceedings. Pursuant to s. 19(1) of the AA, an arbitral tribunal's power to grant interim measures, including *Mareva* injunctions, is subject to the request by one of the parties to the arbitral proceedings and the condition that the parties do not agree otherwise. There is no similar condition of 'unless otherwise agreed by the parties' in s. 11(1) of the AA restricting the High Court's power to grant interim reliefs. (paras 34 & 35)

(3) The High Court's ruling on the issue of jurisdiction was a 'ruling' made in the course of a hearing of the OSs; it was not a decision that finally disposes of the rights of the parties. Accordingly, based on ss. 3 and 67 of the Courts of Judicature Act 1964 and the Federal Court's judgments in *Kempadang Bersatu Sdn Bhd v. Perkayuan OKS No 2 Sdn Bhd* and *Asia Pacific Higher Learning Sdn Bhd (Registered Owner and Licensee of the High*

A *Learning Institution Lincoln University College) v. Majlis Perubatan Malaysia & Anor*, the Court of Appeal does not have the jurisdiction to hear the defendants' appeal of this court's ruling on the issue of jurisdiction. (paras 11 & 12)

B **Case(s) referred to:**
Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor [2020] 3 CLJ 153 FC ***(refd)***
Kempadang Bersatu Sdn Bhd v. Perkayuan OKS No 2 Sdn Bhd [2019] 4 CLJ 131 FC ***(refd)***
The Andria (Renamed The Vasso) [1984] QB 477 ***(refd)***
The Rena K [1979] 1 All ER 397 ***(refd)***

C **Legislation referred to:**
Arbitration (Amendment) Act (No. 2) Act 2018, s. 11(1)(c)
Arbitration Act 2005, ss. 11(1)(a), (b), (c), (d), (e), 19(2)(c)
Courts of Judicature Act 1964, ss. 3, 24, 67(1)

Supreme Court Act 1981 [UK], ss. 20, 21

D *For the plaintiff - Liew Teck Huat, Lim Qi Si & Romario Jono; M/s Suflan T H Liew & Partners*
For the defendants - Sanjay Mohan & Tan Jun Ling; M/s Sanjay Mohan

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JUDGMENT

Faizah Jamaludin J:

Introduction

F **[1]** These are applications by the plaintiff, Jana DCS Sdn Bhd, for *Mareva* injunctions against the defendants in the Amended Originating Summons No. BA-24-30-09-2019 ("OS 30"), BA-24-31-09/2019 ("OS 31") and BA-24-32-09/2019 ("OS 32") (collectively referred to herein as "the OSs"), to restrain the defendants in each OS from removing from Malaysia or
G otherwise from dissipating any of its assets in Malaysia up to the value of RM100 million pending the final determination of the arbitral proceedings initiated and maintained by the plaintiff against each of the defendants under three separate agreements between the plaintiff and each of the defendants entitled "agreement for the implementation of a district cooling system" (referred to collectively as the "DCS agreements").

H **[2]** The defendants in the OSs are TAR PH Family Entertainment (in OS 30), PH Marina Boulevard Sdn Bhd (in OS 31) and TAR PH Sdn Bhd (in OS 32). They are related companies and are subsidiaries of Khazanah Nasional Berhad.

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[3] All three OSs were heard together. At the hearing of the applications on 31 March 2021, it was agreed by counsel for the plaintiff and counsel for the defendants, that counsels will submit on the issue of the High Court's jurisdiction to hear the plaintiff's applications for the *Mareva* injunctions in the OSs. It was also agreed that this court will first deliver its ruling on the question of the High Court's jurisdiction to grant a *Mareva* injunction against the defendants under s. 11(1)(c) of the Arbitration Act 2005 ("AA 2005") pending the disposal of arbitral proceedings between the parties before an arbitral tribunal. It was further agreed that if this court rules that the High Court has the jurisdiction to hear the plaintiff's application pending the arbitral proceedings, this court will proceed with the substantive hearing of the plaintiff's application in the OSs on its merits. And if this court rules that the High Court does not have the requisite jurisdiction, it will dismiss the plaintiff's application for the *Mareva* injunctions in all three OSs on the grounds of its lack of jurisdiction.

[4] For the reasons set out herein, this court ruled that the High Court does have the requisite jurisdiction to hear and to grant the plaintiff's application for *Mareva* injunctions in the OSs pending the disposal of arbitral proceedings between the parties before an arbitral tribunal.

[5] However, before the matter could proceed to the substantive hearing of the plaintiff's application in the OSs on its merits, the defendants filed an appeal to the Court of Appeal on this court's ruling on the issue of the High Court's jurisdiction.

[6] In light of the recent decisions of the Federal Court in *Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor* [2020] 3 CLJ 153; [2020] 2 MLJ 1; [2020] 2 AMR 517 and *Kempadang Bersatu Sdn Bhd v. Perkayuan OKS No 2 Sdn Bhd* [2019] 4 CLJ 131; [2019] 4 MLJ 614, the question is does the Court of Appeal have the jurisdiction to hear the defendants' appeal of this court's ruling on its jurisdiction to hear the plaintiff's applications prior to the court's final decision on the substantive applications in the OSs?

[7] The Federal Court in *Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor* (*supra*), in its majority decision, held that the right of appeal in civil matters under s. 67 of the Courts of Judicature Act 1964 (the "CJA") is subject to the definition of "decision" in s. 3 of the CJA, which excludes rulings made in the course of a trial or hearing that does not finally dispose of the rights of the parties.

[8] Section 67 of the CJA states that the Court of Appeal has the jurisdiction to determine appeals from any "judgment" or "order" of the High Court. The word "decision" is not expressly used in s. 67 of the CJA. However, the words "judgment" or "order", though not defined in the CJA, are included in the definition of "decision" in s. 3 of the CJA. Section 3 of

A the CJA defines "decision" to mean "judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties."

[9] In *Kempadang Bersatu Sdn Bhd v. Perkayuan OKS No 2 Sdn Bhd* (*supra*), the Federal Court held that the exception in s. 3 of the CJA, which excludes B "ruling" from the meaning of "decision" should be extended to s. 67(1) of the CJA. Zainun Ali FCJ delivering the judgment of the Federal Court held:

> [31] In the absence of the word 'decision' in sub-s. 67(1) of the CJA, the question is whether the phrase 'judgment or order' mentioned in sub-s. 67(1) of the CJA is a 'decision' within the context of s. 3 of the C CJA. Putting it in another way, the question is whether the exception provided in s 3, which excludes a 'ruling' from the meaning of decision, should be extended to s. 67(1), thus restricting any appeal to be filed against any ruling of the High Court?
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> [32] It bears repeating that the words 'judgment' and 'order' are not D defined in s. 3 of the CJA. Nevertheless they appear in s. 3, to form the meaning of 'decision'. The omission of the word 'decision' in sub-s 67(1) of the CJA is capable of being understood. Section 3 says that 'decision' means judgment, sentence or order …'. It is seen that by the words 'judgment' and 'order', sub-s. 67(1) indicates the form a 'decision' will take in s. 3 of the CJA where the word 'sentence' is absent. This is appropriate E since a civil court does not impose a sentence in its decision. A sentence is a decision given by a judge sitting in a criminal court upon conviction of a criminal charge. Thus the words in sub-s. 67(1) are clear and unambiguous and the court must give effect to its meaning.

[10] The Federal Court in its majority judgment in *Asia Pacific Higher* F *Learning* expressed its agreement with its earlier judgment in *Kempadang* that s. 3 of the CJA applies to civil appeals. Azahar Mohamed CJ (Malaya) delivering the supporting judgment of the Federal Court *Asia Pacific Higher Learning* held:

> [75] Hence, the uncertainty on whether s. 3 applied to civil appeals in the G absence of the word 'decision' in s. 67(1) has been laid to rest in *Kempadang* where the Federal Court held that the principles underlying the application of s. 3 in criminal appeals were applicable in civil appeals.
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> ...
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> [77] *The decision [in Kempadang] is a clear authority to support the proposition* H *that s. 67(1) read with ss. 3 and 68(1) of the CJA precluded a litigant's right of appeal against a High Court decision in an amendment application made in the course of trial that does not finally dispose of the rights of parties*. Otherwise, it would allow parties in civil matters to circumvent the restrictions imposed by the definition of 'decision' in s. 3 of the CJA and thereby appeal against every decision of trial court, which would indisputably delay the I administration of justice. The intention of the Legislature is clear on the matter. It is to limit and filter the number of appeals to the Court of Appeal. What it means in practice is that it is intended to filter appeals

> so as to prevent the appellate courts from being inundated with appeals and to prevent delays to the administration of justice. The legislative provisions are likewise clear in precluding from appeals decisions made in the course of trial and which do not finally dispose of the rights of parties. It has to be noted here that an aggrieved party would not be prejudiced by the filtering effect of s. 3 of the CJA as it would still be open to the aggrieved party to raise the offending ruling in the appeal proper at the conclusion of the entire trial (see *Karpal Singh a/l Ram Singh v. Public Prosecutor* [2012] 5 MLJ 293).
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> ...
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> [85] For the foregoing reasons, the decision made by the High Court in the amendment application was not appealable. As the decision of the High Court in the amendment application was not appealable, the Court of Appeal had no jurisdiction to hear and determine the appeal. It committed a jurisdictional error when it heard the appeal. The respondent's appeal against the decision of the High Court was therefore incompetent and not properly brought before the Court of Appeal ...
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> (emphasis added)

[11] This court's ruling on whether it has the jurisdiction to hear the plaintiffs' applications for the *Mareva* injunctions in the OSs pending the disposal of arbitral proceedings between the parties before an arbitral tribunal, is a "ruling" made in the course of a hearing of the OSs – it not a decision that finally disposes of the rights of the parties in respect of the plaintiff's applications for *Mareva* injunctions in the OSs.

[12] Accordingly, based on ss. 3 and 67 of the CJA and the Federal Court's judgments in *Kempadang* and *Asia Pacific Higher Learning*, the answer to the question posed above is that the Court of Appeal does not have the jurisdiction to hear the defendant's appeal of this court's ruling on the issue of the High Court's jurisdiction to grant the plaintiff's applications for the *Mareva* injunctions in the OSs. As Azahar Mohamed CJ (Malaya) observed in *Asia Pacific Higher Learning*, the aggrieved party is not prejudiced as it can appeal against this court's ruling on its jurisdiction in the appeal proper at the conclusion of the substantive hearing of the plaintiff's applications for the *Mareva* injunctions in the OSs.

[13] Nevertheless, notwithstanding the issue as regards the Court of Appeal's jurisdiction to hear the defendants' appeal on this court's ruling on the High Court's jurisdiction, prior to the substantive hearing of the OSs and this court's final decision on the plaintiff's application for the *Mareva* injunctions, I set out in this "grounds of judgment" the full reasons for this court's ruling as regards its jurisdiction to grant *Mareva* injunctions pending the disposal of arbitral proceedings between the parties before an arbitral tribunal.

A **Does The High Court Have The Jurisdiction To Grant A *Mareva* Injunction Pending The Disposal Of Arbitral Proceedings?**

[14] The defendants contend that the High Court does not have the requisite jurisdiction to grant the plaintiff's applications for the *Mareva* injunctions against the defendants pending the disposal of arbitral proceedings between them before an arbitral tribunal.

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[15] The defendants' case is that the High Court's power to grant interim reliefs in respect of arbitral proceedings (i) is confined to the powers conferred on it in s. 11(1)(a) to (e) of the Arbitration Act 2005 ("AA 2005"); (ii) such interim reliefs do not include *Mareva* injunctions because the power to grant interim measures for the preservation of assets lies with the arbitral tribunal pursuant to s. 19(2)(c) of the AA 2005; and (iii) the High Court's power to grant an interim relief for the preservation of assets under s. 11(1)(c) of the AA 2005 is limited to arrests of ships, bail or security under its the admiralty jurisdiction.

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[16] Learned counsel for the plaintiff disagrees. The plaintiff's position is that the High Court does have the jurisdiction to grant *Mareva* injunctions in respect of arbitral proceedings under s. 11(1)(c) of the AA 2005 and that such power is not limited to the High Court's admiralty jurisdiction.

E **Is The High Court's Power To Grant Interim Reliefs In Relation To Arbitral Proceedings Under Section 11(1)(C) Limited To Arrests Of Ships, Bail Or Security Under Its Admiralty Jurisdiction?**

[17] One the defendant's grounds as to why the High Court does not have the power to grant *Mareva* injunctions is because the High Court's power to grant interim relief for the preservation of assets under s. 11(1)(c) of the AA 2005 is limited to arrests of ships, bail or security under its the admiralty jurisdiction.

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[18] Section 11(1)(c) of the AA 2005 states:

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> 11. Arbitration agreement and interim measures by High Court
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> (1) A party may, before or during arbitral proceedings, apply to a High Court for any interim measure and the High Court may make the following orders for the party to:
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> ...
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> (c) provide a means of preserving assets out of which a subsequent award may be satisfied, whether by way of arrest of property or bail or other security pursuant to the admiralty jurisdiction of the High Court;

[19] In determining the merit of the argument put forward by the defendant, it is necessary for this court to first examine the High Court's admiralty jurisdiction.

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The High Court's Admiralty Jurisdiction

[20] The High Court's admiralty jurisdiction is derived from s. 24 of the CJA, which states as follows:

> Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include:
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> ...
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> (b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Supreme Court Act 1981;

[21] The English High Court's admiralty jurisdiction is contained in ss. 20 and 21 of the United Kingdom's Supreme Court Act 1981 ("SCA 1981").

[22] The United Kingdom is a signatory to the "*The International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, Brussels 1952*" (commonly referred to as the "Arrest Convention"). The SCA 1981 gives effect to the Arrest Convention, as did the earlier UK's Administration of Justice Act 1959, which was repealed and replaced by the SCA 1981.

[23] Whilst Malaysia is not a signatory to Arrest Convention, by reason of s. 24 of the CJA, the UK's admiralty jurisdiction (including the provisions of the Arrest Convention as contained in the SCA 1981) is incorporated into the Malaysian High Court's civil jurisdiction.

[24] The AA 2005 was first amended by the Arbitration (Amendment) Act 2011 (the "2011 Amendment Act") to allow for the arrest of ships as security for arbitration proceedings in Malaysia.

[25] Prior to the amendment by the 2011 Amendment Act, a ship cannot be arrested as security for arbitration proceedings in Malaysia, unless the plaintiff can satisfy the court pursuant to the principles promulgated by the English High Court in *The Rena K* [1979] 1 All ER 397. This is because the English High Court's admiralty jurisdiction to issue a warrant of arrest may only be exercised in support of the court's jurisdiction "to hear and determine a maritime claim", and not if the substantive claim is being determined through arbitration proceedings instead of the High Court. In English Court of Appeal case of *The Andria (Renamed The Vasso)* [1984] QB 477, Robert Goff LJ explained the principle as follows:

> *... on the law as it stands at present, the court's jurisdiction to arrest a ship in an action in rem should not be exercised for the purpose of providing security for an award which may be made in arbitration proceedings*. That is simply because the purpose of the exercise of the jurisdiction is to provide security in respect of the action in rem, and not to provide security in some other proceedings, for example, arbitration proceedings. The time may well come when the law on this point may be changed: see section 26 of the

A Civil Jurisdiction and Judgments Act 1952 which has however not yet been brought into force. But that is not yet the law. *It follows that, if a plaintiff invokes the jurisdiction of the court to obtain the arrest of a ship as security for an award in arbitration proceedings, the court should not issue a warrant of arrest*.

B (emphasis added)

[26] The AA 2005 was amended by the 2011 Amendment Act, to extend the High Court's jurisdiction to grant interim relief to include arrest of ships, bail and security in an action *in rem* under its admiralty jurisdiction for the purpose of providing security for an award which may be made in arbitral C proceedings. For the purpose of the extension of the High Court's jurisdiction, the 2011 Amendment Act amended s. 11(1)(c) of the AA 2005 by inserting after the word "dispute", the words "whether by way of arrest of property or bail or other security pursuant to the admiralty jurisdiction of the High Court". The amendment to s. 11(1)(c) of the AA 2005 came into D effect on 1 July 2011; it reads as follows (the words inserted by the 2011 Amendment Act are underlined):

11. Arbitration agreement and interim measures by High Court

(1) A party may, before or during arbitral proceedings, apply to a High Court for any interim measure and the High Court may make the E following orders for:

...

(c) securing the amount in dispute, **whether by way of arrest of property or bail or other security pursuant to the admiralty jurisdiction of the High Court**.

F (emphasis added)

[27] Section 11(1)(e) of the AA 2005 together with the rest of paras. (a) to (h) of s. 11(1) were later repealed by the Arbitration (Amendment) Act (No. 2) Act 2018 (the "2018 Amendment Act"). The amended s. 11(1) of the G AA 2005 reads as follows:

11. Arbitration agreement and interim measures by High Court

(1) A party may, before or during arbitral proceedings, apply to a High Court for any interim measure and the High Court may make the following orders for the party to:

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(a) maintain or restore the *status quo* pending the determination of the dispute;

(b) take action that would prevent or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process;

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(c) provide a means of preserving assets out of which a subsequent award may be satisfied, whether by way of arrest of property or bail or other security pursuant to the admiralty jurisdiction of the High Court;

(d) preserve evidence that may be relevant and material to the resolution of the dispute; or

(e) provide security for the costs of the dispute.

[28] As can be seen from s. 11(1) above, the High Court's jurisdiction to grant interim relief for arbitral proceedings under its admiralty jurisdiction is preserved in the new s. 11(1)(c) of the AA 2005. This is reflected in *Hansard* dated 3 April 2018 at p. 70, where the Deputy Minister in Prime Minister's Department explained to Parliament:

> Selain itu seksyen 11 juga **memelihara** peruntukan penting membenarkan penahanan harta oleh Mahkamah Tinggi dalam konteks timbang tara tuntutan maritime dengan menggunakan bidang kuasa MLT nya untuk mengambil jaminan sementara tuntutan maritime diteruskan.
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> (emphasis added)

[29] It is clear that the extension of the High Court's jurisdiction to grant interim relief before or during arbitral proceedings under its admiralty jurisdiction, through the amendment to s. 11(1)(e) of AA 2005 by the 2011 Amendment Act, was preserved in the new s. 11(1)(c) pursuant to the 2018 Amendment Act.

[30] I am unable to agree with the defendants' argument that this extension of the High Court's power to grant interim reliefs for arbitral proceedings pursuant to its admiralty jurisdiction restricts or confines the High Court's power to grant interim relief under s. 11(1)(c) of the AA 2005 to arrests, bail or other security under its admiralty jurisdiction only. From the plain reading of s. 11(1) of the AA 2005, as amended by the 2011 Amendment Act and the 2018 Amendment Act, the extension of the High Court's power to arrest ships as security for arbitral proceedings under its admiralty jurisdiction does not cancel or strip its power to grant interim reliefs for arbitral proceedings under its civil jurisdiction. Pursuant to established principles of statutory interpretation, it would be wrong to conclude that the extension of the High Court's jurisdiction to grant interim relief for arbitral proceedings under its admiralty jurisdiction means the removal of its jurisdiction to grant interim relief for arbitral proceedings under its civil jurisdiction, without any express provisions in the AA 2005 to that effect.

[31] For this reason, this court finds that notwithstanding the extension of the High Court's jurisdiction to grant interim relief for the arrest of ships as security for arbitral proceedings under its admiralty jurisdiction, the High Court retains its power to grant interim reliefs under its civil jurisdiction as a means of preserving assets for the purpose of satisfying awards which may be made in arbitral proceedings.

A **Does The Power Conferred By Section 19(2) Of AA 2005 To Arbitral Tribunals To Order Interim Measures Have The Effect Of Stripping The High Court Of Its Jurisdiction To Grant Interim Measures Under Section 11(1) Of AA 2005?**

B **[32]** Another argument put forward by the defendants to support their contention that the High Court does not have the jurisdiction to grant a *Mareva* injunction before or during arbitral proceedings is because the arbitral tribunal is empowered to grant such relief under s. 19(2)(c) of the AA 2005.

[33] Section 19 of the AA 2005, as amended by the 2018 Amendment Act, states:

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> 19. Power of arbitral tribunal to order interim measures
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> (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
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> (2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:
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> (a) maintain or restore the *status quo* pending the determination of the dispute;
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> (b) take action that would prevent or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself;
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> (c) provide a means of preserving assets out of which a subsequent award may be satisfied;
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> (d) preserve evidence that may be relevant and material to the resolution of the dispute; or
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> (e) provide security for the costs of the dispute.

[34] Without any express provisions to that effect, it would be wrong to G impute into the AA 2005 that the power given to arbitral tribunals to grant interim measures in s. 19(2) of the AA 2005 replaces or *in lieu* of the High Court's powers in s. 11(1) of the AA 2005 to grant interim measures before or during arbitral proceedings.

[35] As can be seen from s. 19(1) of the AA 2005, an arbitral tribunal's H power to grant interim measures, including *Mareva* injunctions, is subject to the request by one of the parties to the arbitral proceedings and the condition that the parties do not agree otherwise. Whereas, there is no similar condition of "unless otherwise agreed by the parties" in s. 11(1) of the AA 2005 restricting the High Court's power to grant interim reliefs.

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[36] The High Court's power to grant interim reliefs pursuant to its civil jurisdiction and its admiralty jurisdiction under the CJA is reflected in s. 11(1) of the AA 2005 which states that "A party may, before or during arbitral proceedings, apply to a High Court for any interim measure and the High Court may make the following orders for the party to".

[37] For all the reasons above, I find that the High Court's power to grant interim measures for preserving assets before or during arbitral proceedings is not limited to the arrests of ships, bail or security pursuant to its admiralty jurisdiction. Such power includes the discretion to grant other interim measures pursuant to its civil jurisdiction under the CJA, including the power to grant *Mareva* injunctions for purposes of preservation of property out of which a subsequent arbitration award may be satisfied before or during arbitral proceedings.

Decision

[38] Accordingly, I find that this court has the jurisdiction to hear and to decide upon the plaintiff's applications for *Mareva* injunctions under OS 30, OS 31 and OS 32 against the defendants pending the disposal of the arbitral proceedings between them.